

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

John R. Sloop

Serial No.: 10/625,146

Filed: July 23, 2003

For: Wild Animal Control Apparatus And Method

Confirmation Number: 8269

Group Art Unit: 1615

Examiner: Neil S. Levy

Docket No.: 141901-1010

REPLY BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Examiner's Answer mailed September 22, 2009 has been carefully considered. In response thereto, please consider the following remarks.

AUTHORIZATION TO DEBIT ACCOUNT

It is not believed that extensions of time or fees for net addition of claims are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefore (including fees for net addition of claims) are hereby authorized to be charged to deposit account no. 20-0778.

REMARKS

The Examiner has provided in the Examiner's Answer various responses to arguments contained in Appellant's Appeal Brief. Although the Examiner's Answer has added some additional remarks in response to Appellant's arguments, the substance of the rejections and the Examiner's positions have not changed. Accordingly, Appellant stands behind the arguments set forth in the Appeal Brief. In addition, Appellant addresses selected responses in the following.

I. STATUS OF THE CLAIMS

Claims 1, 27, and 28 stand finally rejected. No claims have been allowed. Claims 9 – 21 have been canceled. Claims 2 – 8 and 22 – 26 have been withdrawn. The final rejections of claims 1, 27, and 28 are appealed.

II. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 27, and 28 stand rejected under 35 U.S.C. §112, first paragraph for allegedly failing to comply with the written description requirement. Claims 1, 27, and 28 also stand rejected under 35 U.S.C. §112, second paragraph for allegedly being indefinite for failing to particularly point and distinctly claim the subject matter which Appellant regards as the invention. Claim 1, 27, and 28 further stand rejected under 35 U.S.C. §102(b) or in the alternative under 35 U.S.C. §103(a) over U.S. Patent Number 5,674,518 ("*Fajit*").

III. ARGUMENTS

A. Rejections Under 35 U.S.C. §112, First Paragraph

1. Claims 1, 27, and 28 are Allowable – “Non-Target” Animals

The Examiner argues that “the claims to a target wild animal, while met with the disclosed sugar or meat, do not prevent non-target animals from being attracted & subdued... Appellant relies on a low stomach pH as a means for targeting specific animals, such as coyotes. But the low acidity is also found in other carnivores” (Examiner’s Answer page 5, line 6). Appellant respectfully disagrees with this argument as a reason to reject claims 1, 27, and 28 under 35 U.S.C. §112. First, nowhere do the claims indicate that other “non-target” animals will not also be enticed to the attractant. Second, nowhere do the claims indicate that the “non-target” animals (such as dogs) could conceivably consume the attractant, trigger, and subduing agent. However, due to the design of the invention, as recited in the claims, interaction of the subduing agent with these “non-target” animals will be minimized. More specifically, the Examiner contends that “cats & rats” would be “attracted & killed” by the device. Appellant disagrees. More specifically, as the subduing agent is only released by dissolving the trigger, “cats & rats” could not consume the trigger because these animals do not swallow food whole, but instead are “nibble eaters” and would not ever ingest the trigger and subduing agent. Contrast this with the use of poison, which would easily be consumed by cats, rats, birds, squirrels, small dogs, *etc.* Second, because a coyote’s stomach fluids are so acidic, many other “not-target” animals (including some carnivores) will likely have stomach acid concentrations that will not activate the trigger, thereby further reducing the likelihood of activating the trigger to release the subduing agent.

Consequently, regardless of whether the claimed invention reduces the likelihood of a “non-target” animal ingesting and being subdued (which it does), this is not a requirement of claims 1, 27, or 28 and thus is not a valid reason to issue a 35 U.S.C. §112 rejection.

2. Claims 1, 27, and 28 are Allowable – Subduing the Target Animal

The Examiner further argues “[t]he specification identifies subduing agents [0025], only as metal, drug, or percussion or chemical reactants, or sponges, not further exemplified, defined or identified except for Na, K or Li [0036], stated to result in energy release, but not explained as to how this leads to subduing” (EA page five, line 17). Appellant respectfully disagrees. More specifically, see for example paragraphs [0040] – [0045] regarding use of a sponge; see for example paragraphs [0027] – [0028] regarding a percussion device. As clearly illustrated in these paragraphs, “metal, drug, or percussion or chemical reactants, or sponges” are further “exemplified, defined, or identified.” Further, one of ordinary skill in the art would **unquestionably** understand how a “bullet, blank cartridge, or small explosive device” (paragraph [0028]) would subdue a target animal.

While the Examiner argues “[i]t is left to the artisan to determine how much of what components are to be used to subdue a desired species” (EA page 6, line 1), Appellant submits that this is not a violation of 35 U.S.C. §112. More specifically, 35 U.S.C. §112 only requires that the artisan not be required to perform “undue experimentation.” With regard to claims 1, 27, and 28 undue experimentation would not be required for at least the reason that an animal cannot be “over subdued.” Further, the skilled artisan would unquestionably understand an approximate amount of subduing agent to subdue a target animal. Consequently, a rejection of claims 1, 27, and 28 under 35 U.S.C. §112 is improper.

3. Claims 1, 27, and 28 are Allowable – Metal Trigger and Attractants

The Examiner further argues “Appellant states... that the trigger is a metal, but there is no such disclosure in the Specification. Neither is it evident how the sugar or meat, the only specified attractants one would incorporate in the wild animal control device, would be wrapped

around or naturally adhere to the surface of the trigger” (EA page 6, line 11). Appellant again disagrees. First, Appellant merely indicated that metal is a material that a skilled artisan would understand as a possible component in a trigger. However, regardless of whether the Specification provides explicit explanation of using a metal trigger, one of ordinary skill in the art would **unquestionably** understand that a metal will likely dissolve in an acidic solution. Further, other substances also be used. Thus would be understood by the skilled artisan when reading the specification. Similarly, there is absolutely no question that the skilled artisan would understand that the trigger could be inserted into raw meat, coated with sugar, or otherwise be adhered to the attractant.

The Examiner further argues that “[w]e are given no specific compound, material or composition of the trigger, thus it is beyond the capabilities of one of ordinary skill in the art of formulating wild animal control apparatus’ to know what to use as a trigger & how to couple it to the subduing agent and attractant” (EA page 7, line 7). This again is simply an incorrect statement. A skilled artisan could easily determine substances that react with stomach acid, as well as substances that react in solutions with a pH of 2.5 or less. Consequently, a rejection of claims 1, 27, and 28 under 35 U.S.C. §112 is improper.

B. Rejections Under 35 U.S.C. §112, Second Paragraph

Additionally, the Examiner repeats arguments cited above to allege that claims 1, 27, and 28 stand rejected under 35 U.S.C. §112, second paragraph because the claims “present[] no distinct coupling agents or means as to how the subduing agent is coupled to the trigger or what the trigger is” (EA page 8, line 4). Again, Appellant disagrees. More specifically, as clearly indicated above, there is no ambiguity in the claims or specification. As a nonlimiting example, claim 1 describes an attractant, a trigger, and a subduing agent, which are all clearly described

in the specification (in at least the sections cited above). Consequently, any rejection under 35 U.S.C. §112, second paragraph is improper.

C. Rejections Under 35 U.S.C. §102(b) or §103(a)

The Examiner continues to argue that *Fajt* anticipates claims 1, 27, and 28. More specifically, the Examiner argues that the “gel layer 2” anticipates (or renders obvious) the “trigger” of claims 1 and 27. However, this is simply not the case. More specifically, claim 1, for example, recites “***a trigger covered by a portion of the attractant, the trigger adapted to dissolve in an environment having a predetermined pH.***” As clearly illustrated, the trigger dissolves in environments having a predetermined pH. However, the “gel layer 2” of *Fajt* “prevent[s] leaching [sic] of the toxic formulation into the aqueous environment” (column 2, line 24). Nowhere in *Fajt* is there any indication that “gel layer 2” dissolves in an environment with a predetermined pH. Consequently *Fajt* cannot anticipate or render obvious claims 1 or 27.

Further, *Fajt* cannot anticipate claim 28, for at least the reason that *Fajt* clearly discloses the use of poison. More specifically, “[t]his invention concerns an improvement in the control of fish populations by taking advantage of the feeding habits of undesirable species of fish to selectively poison them” (emphasis added; column 1, line 10). Claim 28, by contrast clearly and unambiguously precludes poison, by reciting “The wild animal control apparatus of claim 27, wherein the energy release device subdues the wild animal without poisoning the wild animal.” For at least this reason, the Examiner’s rejections are improper and the present application should be allowed.

CONCLUSION

In summary, it is Appellant's position that the pending claims are patentable over the applied cited art references and that the rejection of these claims should be withdrawn. Appellant therefore respectfully requests that the Board of Appeals overturn the Examiner's rejection and allow the pending claims.

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read 'Anthony P. Bonner Jr.', written over a horizontal line.

Anthony P. Bonner Jr.
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